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WILLIAM H. ADKINS, II  
DIRECTOR

STATE OF MARYLAND  
GOVERNOR'S COMMISSION TO REVISE  
THE ANNOTATED CODE  
SUITE 301, EXECUTIVE BUILDING  
140 MAIN STREET  
ANNAPOLIS, MARYLAND 21404  
TELEPHONE: 267-5989

2-4-6-21

806612

September 21, 1972



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COMMISSION REPORT NO. 3B  
TO THE LEGISLATIVE COUNCIL

TITLE 12 - COURTS AND JUDICIAL PROCEEDINGS ARTICLE

Transmitted herewith is the second staff redraft, 9/20/72 of Title 12 of the proposed revised Courts Article. Title 12 is entitled "Appeals, Certiorari, and Certification of Questions". For the most part, it is a revision of material now contained in Article 5 of the Code. An Article 5 disposition table, attached to this report, summarizes the proposed treatment of the present Article 5 provisions.

Structure and Scope of Title 12.

Title 12 contains the following seven subtitles:

1. Definitions
2. Review of cases in Court of Special Appeals
3. Review of decisions of Trial Courts of General Jurisdiction
4. Review of Decisions of District Court
5. Review of Decisions of Orphans' Courts
6. Certification of Questions of Law
7. Practice on Appeal

Present Article 5 is basically arranged according to the court to which the appeal is to be taken ("Appeals to Court of Appeals", "Appeals to Circuit Courts for Counties and Superior Court of Baltimore City", etc.). Title 12 takes the opposite approach; its subtitles are arranged according to the court from which the appeal is to be taken. The theory is that a losing litigant or his lawyer knows the court in which he has just lost, but may not know to which court the appeal lies. Thus, it is more useful to arrange the materials in the "appeal from" than the "appeal to" manner.

Title 12 covers general rights of appeal. It does not include provisions pertaining to appeals from local legislative bodies or from State or local administrative agencies. These provisions often differ greatly in their details, making generalization difficult. The Commission proposes to codify them with the substantive laws to which they relate. Thus, Title 12 relates principally to appeals entirely within the judicial system. As a consequence, provisions such as Article 5, Sections 27, 29, and 42 will eventually be placed in the Local Government Article, and probably temporarily transferred to Article 25.

Certain provisions of Article 5 (Sections 15, 15A, 15B, 23, 30(b), and 30(c) deal primarily with allocation and treatment of costs. They will appear in Title 7 of the Courts Article, covering costs and fees.

Finally, some provisions of Article 5 appear to be obsolete or fully covered by rules. These include Sections 4, 12B, 16, and 22. They are reproduced at pp. 41-42 of the draft. The Commission suggests their outright repeal.

Particular Matters.

The Revisor's Note accompanying each section of proposed Title 12 contains explanatory material pertaining to that section. There are some matters which the commission wishes to call to the particular attention of the Legislative Council. These are listed below.

Subtitle 1 - Definitions. The definitions are adopted to avoid unnecessary repetition of terms. For example, "circuit court" includes the component courts of the Supreme Bench of Baltimore City; "criminal case" includes a motor vehicle or traffic case; and "final judgment" includes judgment, decree, sentence, order, determination, decision or other appealable action of a court.

Subtitle 2 - Review of cases in Court of Special Appeals.

This subtitle is merely a rearrangement of present law; no changes are made. 1972 legislation permitting pre-decision review of a case pending in the Court of Special Appeals is included. In Section 12-201 (p.3) the last clause of the last sentence is not expressly set forth in Article 5, but it is clearly implied from Maryland Rule 812. Without this 30-day limitation on post-decision certiorari, it might be thought that the statute is intended to supersede the 30-day limitation now contained in the rule.

The fourth paragraph of Section 12-202 (p.3) is taken from Article 42, Section 20, as amended by ch. 392, 1972.

Subtitle 3 - Review of Decisions of Trial Courts of General Jurisdiction.

Section 12-301 (pp. 5-6) includes a substantive change, but one which the commission thinks is both beneficial and non-controversial.

The draft section is modelled on Article 5, Sections 1 and 6, as well, as other portions of Article 5. The heart of both Section 1 and 6 is an indication that an appeal may be taken "from any final judgment" or decree, subject to <sup>a</sup>stated exception relating to a judgment when the trial court itself has been reviewing a decision of a lower court.

That indication, however, is extremely misleading. Case law spells out another exception - namely, that <sup>no</sup> appeal lies from a trial court's exercise of special, statutory, original jurisdiction, as opposed to common law original jurisdiction.

The fact that this exception is omitted from the statute is a trap for the litigant and for the legislative draftsman. It has also tended to produce a spate of statutory special appeal provisions, such as Article 7, Sec. 18; Art. 16, Secs. 66K and 84; Art. 26, Sec. 70-25; Art. 31A, Sec. 7; Art. 66 1/2, Sec. 7-635; Art. 87, Sec. 15, and many others. The statutes indicate that the General Assembly normally intends to confer a right of appeal when it grants special statutory original jurisdiction.

Consequently, the commission proposes to recognize the actual situation and to provide generally for such appeals in Section 12-301. The statute will then say what it means and mean what it says; present special appeal statutes may be repealed; and the General Assembly will not have to create special appeal rights when it creates special statutory original jurisdiction. Of course, if the legislature creates such a jurisdiction, and wishes to deny a right of appeal, it should do so.

It should be noted that the new rule embodied in Section 12-301 applies only to appeals from exercises of original jurisdiction. If

the trial court of general jurisdiction is exercising appellate jurisdiction, no appeal lies unless expressly granted by law; Section 12-302(a); See also Section 12-305.

In further reference to Section 12-301, note that it eliminates the present provisions of Article 5, Sec. 8, permitting certain appeals by fiduciaries only with consent of the court having jurisdiction over the estate. This is a minor substantive change, but the commission thought it unwise to prevent an appeal unless the court whose decision is to be reviewed consents to it.

Section 12-302(d), (p.8), is not contained in Article 5. Its substance is contained in Article IV, Section 22 of the Constitution. The commission thought it would be convenient to have a reference in Title 12 to court in banc review.

Section 12-304. (pp. 12-14). For historical reasons, it is probably necessary to retain a specific appeal provision with respect to contempt. At common law, there was no appeal from an adjudication of contempt, and contempt jurisdiction is essentially not statutory, but inherent in a court; thus, new Section 12-301 would not cover this situation.

Present Article 5, Section 18 contains a provision pertaining to scope of review in a contempt appeal which may or may not provide the same scope of review as Rules 886 and 1086. This statute, in short, is ambiguous.

After a careful study of the case law, particularly Kandel v. State, 252 Md. 668 (1969), as well as statutory provisions in other States, the commission has concluded that there was no intention to provide for a special scope of review in contempt cases, and that there is no need for a special scope of review in contempt cases.

Section 12-304 has been drafted accordingly.

Section 12-305. (pp. 14-15). This proposal also embodies a small substantive change. The section deals with discretionary review of decisions of trial courts of general jurisdiction acting in appellate capacities. Present law (Art. 5, Sec. 21) authorizes such review when, inter alia, "the same statute has been construed differently by the courts of two or more circuits."

The present statute does not address itself to the problem of different construction of the same statute by two or more judges in a multi-judge county. Suppose, for example, that in Montgomery County, on appeal from the District Court, Judge A. construes Article 26, Sec. 156(a), pertaining to de novo - non-de novo appeals in civil cases, one way, and Judge B., in another case, construes it the opposite way. District Court judges in Montgomery County presumably can choose to follow either interpretation.

Section 12-305 attempts to fill this gap by permitting (although not requiring) further review whenever any two judges of a trial court of general jurisdiction hearing an appeal from the District Court construe the same statute differently.

Section 12-306. (pp. 19-24). This is merely a restatement of Article 5, Section 5A, as amended through 1972, allocating jurisdiction between the Court of Appeals and the Court of Special Appeals. To the extent possible, specific statutory cross-references have been eliminated. This greatly reduces the need for future housekeeping amendments.

Subtitle 4 - Review of Decisions of District Court.

Section 12-401(b)(2), (p. 26) preserves the special short appeals times in grantee suits and certain landlord-tenant cases. The sections referred to are contained in new Article 21, as enacted by ch. 349, 1972,

effective July 1, 1973.

Section 12-401(c), (p.27) states the present law, including 1972 amendments. In doing so, it fails to resolve the problem of a civil appeal with no monetary clause, but with a large underlying monetary impact, as in certain landlord-tenant cases. Should the appeal be de novo or on the record? Similar questions arise in connection with the District Court's exclusive original jurisdiction and with the right to claim a jury trial in a civil case originally filed in the District Court.

Important substantive policy questions are involved here, and are beyond the scope of this commission's authority. We have sought advice from the Landlord-Tenant Commission, but as yet have received none. We respectfully suggest that this problem area is one requiring study by the Legislative Council.

Section 12-402. (p. 28). This contempt appeal section has been written to conform to Section 12-304; see the discussion of that section, supra. The present 10-day appeal requirement is deleted as unnecessary.

Subtitle 6 - Certification of Questions of Law.

This subtitle follows ch. 427, 1972, with only minor stylistic changes.

Subtitle 7 - Practice on Appeal.

Section 12-703, (pp. 43-45) involves a number of problems which should be carefully considered. The general area is that of the imposition of a proper resentence following an appeal.

Subsection (a) of Section 12-703 states, in its first sentence, the provisions of Article 5, Section 17. It requires, upon resentencing, credit for time served under the previous sentence, from date of original conviction. The second sentence states a rule of constitutional

law set forth in North Carolina v. Pearce, 395 U.S. 711 (1969); see also Wright v. State, 11 Md. App. 673 (1971).

Thus, under present statutory and case law, upon resentencing, (1) credit must be given for time actually served under the original sentence; and (2) credit must be given for "jail time" prior to the original sentence if the sentence was a maximum sentence.

The substantive policy issue left open here is whether all "jail time" should be credited in connection with a resentencing. Section 12-703(a), like the cases cited, mandates this only if a maximum sentence was involved. The Commission on Criminal Law proposes credit for all "jail time"; Proposed Criminal Code, Sec. 70.30.3.

Also left open is the treatment of fines. Pearce indicates that the principles enunciated there apply to fines as well as to incarceration. State law is silent on the point.

The commission respectfully suggests that these substantive problems are appropriate for study by the Legislative Council.

Subsections (b) and (c) deal with limitations on imposition of an increased sentence on resentencing.

Subsection (b) states the rule of constitutional law first stated in North Carolina v. Pearce, supra, and reaffirmed in Colten v. Kentucky, 92 S. Ct. 1953 (1972). The rule is that due process forbids the imposition of a greater sentence following a normal appeal, unless the conditions spelled out in the subsection are met. This rule is not set forth in any Maryland statute. The commission thought it would be helpful to state it statutorily, thus making the rule easily accessible to those concerned with sentencing.

Subsection (c) in effect states the statutory provision now embodied in Article 5, Sec. 43, by virtue of ch. 181, 1972. This



applies the Pearce rule to resentencing following a trial de novo by way of appeal. Cherry v. State, 9 Md. App. 416 (1970) held this to be constitutionally required, but Colten v. Kentucky, supra, held otherwise, the majority distinguishing between a de novo appeal and other types of appeal.

In any event, the rule stated in subsection (c) is the statute law of the State, and (b) and (c) taken together provide a uniform system easily understood and readily available.

It may be noted that the proposed Criminal Code, in Section 80.20.2, would flatly prohibit any increase on resentencing; compare the Uniform Code of Military Justice, 10 U.S.C.A., Sec. 863. The proposed Criminal Code provision probably doesn't apply to sentencing following de novo appeals. The Reporter for the Commission on Criminal Law does not believe that this aspect of the matter was considered by that commission.

Conclusion. Except for the matters discussed above, Title 12 essentially involves a restatement of Article 5 of the present Code, with some related materials, in what the Code Revision Commission hopes is somewhat improved form and language.



William H. Adkins, II  
Director

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Distribution: A-3